

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 6

Dated 25TH MAY 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220715/0009755

COMPLAINANTS.....

**MR. HULIRAJ H &
MRS. SMITHA HULIRAJ
NENAPU, 3RD CROSS
PRIYANKA LAYOUT
MATTUR ROAD
VIDHYANAGAR
SHIVAMOGGA-577203.**

**(BY MR. LEELESH KRISHNA,
ADVOCATE)**

V/S

RESPONDENTS.....

**1. M/S OZONE REALTORS PVT LTD
NO.51/7-1, RATHNA AVENUE
OFF RICHMOND ROAD
CIVIL STATION
BANGALORE-560025.**

**2. M/S OZONE REALTORS
PRIVATE LIMITED
NO.38, ULSOOR ROAD
YELLAPPA GARDEN
YELLAPPA CHETTY LAYOUT
SIVANCHETTI GARDENS
BANGALORE-560042.**

**(BY MR. DEEPAK BHASKAR
ADVOCATE & OTHERS)**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "**OZONE POLESTAR**" developed by M/s Ozone Realtors Private Limited at S.No.78/5, Nagavara Village, Kasaba Hobli, Bangalore

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North Taluk, Bangalore Urban District for the relief of refund with interest.

2. This project is registered under RERA bearing registration No. PRM/KA/RERA/1251/309/PR/171015/000386 valid till 31/03/2021. The Authority has granted covid extension to the project for a period of 9 months i.e. till 31/12/2021.

Brief facts of the complaint are as under:

3. The complainants had booked a flat in the project of the respondents for a total sale consideration of Rs.88,06,774/- (Rupees Eighty Eight Lakh Six Thousand Seven Hundred and Seventy Four only) and entered into an agreement for sale on 29/09/2018 with the respondents and have paid an amount of Rs.31,88,778/- (Rupees Thirty One Lakh Eighty Eight Thousand Seven Hundred and Seventy Eight only) to the respondents on various dates. As per the agreement, the respondent was supposed to handover the unit to the complainants by the end of December 2021 but the respondent has failed to handover the unit to the complainants. Tripartite agreement was entered into on 08/03/2019 for housing loan. The respondent has not paid PEMIs as agreed. The complainants further submit that they were forced to pay Pre-EMI and Home Insurance EMI from April 2021 to till date. The construction work has been stalled and even foundation work is not completed. The complainants also submit that they have terminated the agreement for sale as per termination letter dated 15/4/2021. The respondents did not adhere to the demands raised in the termination letter and hence the complainants sent a legal notice to the respondents on 01/04/2022. The respondents have not taken any action on the legal notice. Thus, the complainants have approached this Authority and pray for direction to the respondents for refund of amount with interest, pre-EMIs and Home Insurance EMIs. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondents appeared before the Authority through its counsel and

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representatives. The respondents have filed their written submission as under:-

5. The respondent submits that the complainants have made own contribution of Rs.3,68,164/- out of total sale consideration of Rs.88,06,774/- towards the unit and Rs.26,42,032/- being housing loan under subvention scheme. The complainants have sought for cancellation of the allotment and refund of amount with interest and payment of PEMIs paid. The respondent further submits that they have paid payment of Rs.4,14,158/- in favour of the complainants, which has not been taken into consideration by the complainants in their memo of calculation.
6. The complainants vide their cancellation letter dated 15/4/2022 have requested for cancellation of allotment and refund of amount with interest. The respondent submits that the principal amount claimed by the complainants is not matching with their records and the Housing Loan Insurance Premium of Rs.1,78,582/- paid by the complainants is not agreed for reimbursement. The respondent also submits that the complainants have not submitted proof of the PEMI payments made in favour of the financial institution for reconciliation of differences.
7. The respondent have requested the Authority to consider the following:
 - a) Rs.3,68,164/- Own contribution by the complainants.
 - b) Rs.87,812/- Interest payable on the principal amount as per section 18(a) of the RERA Act.
 - c) Rs.4,55,976/- Total amount payable to the complainants.
 - d) Rs.26,42,032/- Total amount payable to the lending financial institution.
8. The respondent prays the Hon'ble Authority to take on record the above calculation in the interest of justice and equity.

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9. In support of their defence, the respondent has submitted copies of documents such as, agreement of sale, Home Loan agreement, Proof of payment in respect of pre-EMI and revised calculation sheet as on 31/03/2023 submitted on 13/4/2023.
10. In support of their claim, the complainants have produced copies of documents such as agreement of sale, customer statement issued by respondent company, Home Loan agreement, HDFC Bank notice for not having cleared PEMIs and House Insurance EMIs, Statement of Account issued by HDFC Bank for having paid PEMIs and Home Insurance EMIs, Termination letter dated 15/4/2021, payment receipts, Legal Notice sent to respondent dated 01/04/2022 and memo of calculation as on 09/02/2023.
11. Heard arguments of both sides.
12. On the above averments, the following points would arise for my consideration:
- a. Whether the complainants are entitled for the relief claimed?
- b. What order?
13. My answer to the above points are as under:-
- a. In the Affirmative.
- b. As per final order for the following
14. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement of sale and having received a substantial sale consideration amount from the complainants and the termination letter dated 15/4/2021 for cancellation of allotment and to refund the amount, the respondents have neither refunded the amount with interest nor have completed the apartment as agreed and have delayed the project till date. There seems to be no possibility of completing the project or handing over the possession of the apartment in the near future.
15. As per section 18(1) of RERA Act, in case the allottee wishes to withdraw from the project, the promoter is liable without prejudice to any other remedy available, to return the amount received by him in

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respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

16. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.
17. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainants have paid substantial total sale consideration amount towards the apartment and have sent termination letter to the respondents requesting for cancellation of allotment and refund of amount, on coming to know that the construction is stopped and the project will be delayed.
18. During the process of the hearing, the respondent submitted that they have refunding an amount of Rs.4,00,000/- to the complainants, which the complainants denied of having received any such amount from the respondent. The Authority directed the respondents to submit proof for having refunded Rs.4,00,000/- to the complainants.
19. From the documents enclosed to the written submission submitted by the respondents at Page No.49 Schedule showing Place and Date of Loan Agreement dated 8/3/2019, the HDFC has issued a receipt for Rs.4,14,158/- clearly stating that "by way of adjustment against loan procession of the complainants", which the respondents are claiming that they have paid the said amount to Mrs. Smitha Huliraj. The receipt clearly indicates that it is an adjustment made by the HDFC out of the Loan amount sanctioned to the complainants and not the amount paid by the respondents.
20. The complainants have filed their memo of calculation as on 09/02/2023 claiming a refund of Rs.44,18,335/- (Rupees Forty Four Lakh Eighteen Thousand Three Hundred and Thirty Five only) with

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interest. A thorough verification of the documentary proof submitted by the complainants reveals that their claim is genuine. Having accepted the said amount and failure to keep up promise to handover possession of the apartment as agreed certainly entitles the complainants herein for refund with interest.

21. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Interest Calculation Till 30/04/2017 (Before RERA)					
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	30/04/2017	0	0	30/04/2017	0
2		0		TOTAL INTEREST (I1)	0

Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTE REST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01/05/2017	0	2110	09/02/2023	8.15	10.15 as on 01-05-2017	0
2	28/09/2018	10,000	1595	09/02/2023	8.65	10.65 as on 01-09-2018	4,653
3	28/09/2018	90,000	1595	09/02/2023	8.65	10.65 as on 01-09-2018	41,885
4	29/09/2018	83,000	1594	09/02/2023	8.65	10.65 as on 01-09-2018	38,603
5	11/03/2019	2,227,874	1431	09/02/2023	8.75	10.75 as on 10-03-2019	938,957
6	11/03/2019	414,158	1431	09/02/2023	8.75	10.75 as on 10-03-2019	174,550
7	01/04/2021	15,522	679	09/02/2023	7.3	9.3 as on 10-03-2021	2,685
8	01/05/2021	15,522	649	09/02/2023	7.3	9.3 as on 10-04-2021	2,566
9	15/06/2021	15,412	604	09/02/2023	7.3	9.3 as on 15-06-2021	2,371
10	21/06/2021	200	598	09/02/2023	7.3	9.3 as on 15-06-2021	30
11	15/07/2021	15,412	574	09/02/2023	7.3	9.3 as on 15-07-2021	2,254

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12	15/08/2021	15,412	543	09/02/2023	7.3	9.3 as on 15-08-2021	2,132
13	15/09/2021	15,412	512	09/02/2023	7.3	9.3 as on 15-09-2021	2,010
14	15/10/2021	15,412	482	09/02/2023	7.3	9.3 as on 15-10-2021	1,892
15	15/11/2021	15,412	451	09/02/2023	7.3	9.3 as on 15-11-2021	1,771
16	15/12/2021	15,412	421	09/02/2023	7.3	9.3 as on 15-12-2021	1,653
17	15/01/2022	15,412	390	09/02/2023	7.3	9.3 as on 15-01-2022	1,531
18	15/02/2022	15,412	359	09/02/2023	7.3	9.3 as on 15-02-2022	1,409
19	15/03/2022	15,412	331	09/02/2023	7.3	9.3 as on 15-03-2022	1,299
20	15/04/2022	15,412	300	09/02/2023	7.4	9.4 as on 15-04-2022	1,190
21	15/05/2022	15,412	270	09/02/2023	7.5	9.5 as on 15-05-2022	1,083
22	15/06/2022	16,293	239	09/02/2023	7.7	9.7 as on 15-06-2022	1,034
23	15/07/2022	16,293	209	09/02/2023	7.8	9.8 as on 15-07-2022	914
24	15/08/2022	16,293	178	09/02/2023	8	10.0 as on 15-08-2022	794
25	15/09/2022	18,494	147	09/02/2023	8	10.0 as on 15-09-2022	744
26	15/10/2022	18,494	117	09/02/2023	8.25	10.25 as on 15-10-2022	607
27	15/11/2022	18,494	86	09/02/2023	8.35	10.35 as on 15-11-2022	451
28	15/12/2022	19,595	56	09/02/2023	8.6	10.6 as on 15-12-2022	318
29	15/01/2023	23,602	25	09/02/2023	8.6	10.6 as on 15-01-2023	171
30	TOTAL AMOUNT	3,188,778				TOTAL INTEREST (I2)	1,229,557

44/15/23

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 09/02/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
31,88,778	12,29,557	0	44,18,335

22. Accordingly, the point raised above is answered in the Affirmative.

23. **My answer to Point No.2:-** In view of the above discussion, I proceed to pass the following –

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220715/0009755** is hereby allowed.

Respondent is directed to pay the amount of **Rs.44,18,335/- (Rupees Forty Four Lakh Eighteen Thousand Three Hundred and Thirty Five only)** towards refund with interest calculated at MCLR + 2% from 01/05/2017 till 09/02/2023 to the complainants within 60 days from the date of this order. The interest due from 10/02/2023 up to the date of final payment will be calculated likewise and paid to the complainants.

The complainants are at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.


(Neelmani N Raju)
Member, K-RERA